



CABINET FOR HUMAN RESOURCES
COMMONWEALTH OF KENTUCKY
FRANKFORT 40621-0001

DEPARTMENT OF LAW

February 24, 1994

Mr. Steve Mirkin, Esq.
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane
Suite 302
Frankfort, Kentucky 40601

Re: Expert Assistance in Death Penalty Case

Dear Mr. Mirkin:

This is given in response to your letter to me of February 14, 1994, wherein you have requested that the Cabinet for Human Resources supply you with an expert witness to assist you in the preparation of a death penalty case on behalf of Mr. Jackie Marple, who has been charged with two (2) counts of murder in Adair County. The assistance which you have requested, as presented in your letter, is as follows:

"...I expect such assistance will include: evaluation of records, witness statements and other materials obtained through the defense's efforts; confidential evaluation of the accused; consultation with counsel as to availability and viability of potential defenses, and potential penalty-phase strategies, as well as direction for further investigation to develop such defenses or strategies; assistance in the preparation and presentation of direct testimony of experts and/or lay witnesses necessary to lay the foundation for expert opinions; assistance in the planning and preparation of cross-examination of expert and lay witnesses to be called by the Commonwealth on mental health matters; and expert testimony on the accused's behalf, with preparation for such testimony, as well as for cross and redirect examination."

This is to advise that the Cabinet is unable to provide you with the specific assistance which you have requested because of both budgetary considerations and the need for the Cabinet to observe its objectivity in performing the court-ordered forensic evaluations under the Kentucky Penal Code as specifically set

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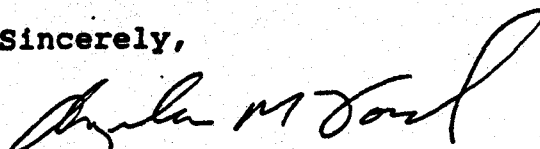
Mr. Steve Mirkin, Esq.
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forth by KRS 504.060-504.110. Staff at the Kentucky Correctional Psychiatric Center (KCPC) do perform court-ordered evaluations for individuals charged with felonies to ascertain competency to stand trial and the capacity of the defendant to appreciate the criminality of the defendant's conduct. Depending upon the clinician's conclusions, the evaluation may or may not favor the defendant. KCPC staff do observe the confidentiality of records, information, and their evaluations relating to defendants and consistent with any requirements which may exist in the court order for the evaluation.

I will confirm your understanding that KCPC clinical staff, including Dr. Frank Deland who has evaluated Mr. Marple, are available to review available and relevant background information and material concerning the persons whom they evaluate, and which could constitute useful input for their evaluations. They are also available to consult with legal counsel to clarify the findings of their evaluations (if not prohibited by the court order), however, they are not available to provide ongoing consultation with counsel for purposes of preparing for trial or developing legal defenses.

Thank you for your interest in this matter.

Sincerely,



Angela M. Ford
Commissioner

/tr

cc: Donald Ralph, Ph.D., Acting Commissioner
Gregory Taylor, Director, KCPC
William K. Moore, Jr., Deputy Counsel